

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CALVIN L. CHOYCE, F-90605,)	
)	
Petitioner,)	No. C 11-1605 CRB (PR)
)	
vs.)	ORDER TO SHOW CAUSE
)	
TERRI GONZALEZ, Acting Warden,)	(Docket # 3)
)	
Respondent.)	
_____)	

Petitioner, a state prisoner incarcerated at the California Men's Colony, has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 challenging a conviction from Alameda County Superior Court. He also seeks to proceed in forma pauperis under 28 U.S.C. § 1915.

BACKGROUND

Petitioner was convicted by a jury of various sexual offenses against four different women. On September 7, 2007, he was sentenced to a prison term of 358 years to life. Petitioner unsuccessfully appealed his conviction to the California Court of Appeal and the Supreme Court of California, which denied review on February 3, 2010.

DISCUSSION

A. Standard of Review

This court may entertain a petition for a writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a).

It shall "award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." Id. § 2243.

B. Claims

Petitioner seeks federal habeas corpus relief by raising the following claims: (1) trial court erred in connection with petitioner's motions for substitution of counsel and request to act as co-counsel; (2) trial court erred in admitting the testimony of several prosecution witnesses; (3) trial court erred in its instruction to the jury on flight, and (4) the cumulative effect of the errors deprived petitioner of a fair trial. Liberally construed, the claims appear cognizable under § 2254 and merit an answer from respondent. See Zichko v. Idaho, 247 F.3d 1015, 1020 (9th Cir. 2001) (federal courts must construe pro se petitions for writs of habeas corpus liberally).

CONCLUSION

For the foregoing reasons and for good cause shown,

1. Petitioner's request to proceed in forma pauperis (docket # 3) is GRANTED.

2. The clerk shall serve a copy of this order and the petition and all attachments thereto on respondent and respondent's attorney, the Attorney General of the State of California. The clerk also shall serve a copy of this order

1 on petitioner.

2 3. Respondent shall file with the court and serve on petitioner, within
3 60 days of the issuance of this order, an answer conforming in all respects to Rule
4 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of
5 habeas corpus should not be granted. Respondent shall file with the answer and
6 serve on petitioner a copy of all portions of the state trial record that have been
7 transcribed previously and that are relevant to a determination of the issues
8 presented by the petition.

9 If petitioner wishes to respond to the answer, he shall do so by filing a
10 traverse with the court and serving it on respondent within 30 days of his receipt
11 of the answer.

12 4. Respondent may file a motion to dismiss on procedural grounds in
13 lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the
14 Rules Governing Section 2254 Cases. If respondent files such a motion,
15 petitioner shall file with the court and serve on respondent an opposition or
16 statement of non-opposition within 30 days of receipt of the motion, and
17 respondent shall file with the court and serve on petitioner a reply within 15 days
18 of receipt of any opposition.

19 5. Petitioner is reminded that all communications with the court must
20 be served on respondent by mailing a true copy of the document to respondent's
21 counsel. Petitioner must also keep the court and all parties informed of any
22 change of address.

23 SO ORDERED.

24 DATED: May 18, 2011

25 
26 CHARLES R. BREYER
27 United States District Judge
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